

MHL

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
6-2-2008
JUN 2 2008 MFD

UNITED STATES OF AMERICA, ex rel,

JOSEPH MAX,
Petitioner

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

NO. 08 C 0616

vs.

KEVIN GILSON, WARDEN,
Respondent.

The Honorable
Matthew F. Keunelly,
Judge Presiding.

PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION TO DISMISS

Joseph MAX, pro se petitioner in the above-entitled cause, comes before the Court in answer to Respondent's "Motion to Dismiss" his petition for writ of habeas corpus and, accordingly, does so by offering the following:

- 1.) Petitioner is no longer incarcerated at the Western Illinois Correctional Center. His new residence is at the Illinois River Correctional Center in Canton, Illinois.

2.) TRUE. Petitioner was convicted and sentenced in Cook County to a term of 70 years for the crime of murder. It is also true petitioner pursued a direct appeal and petitioned the United States Supreme Court for a writ of certiorari which was denied. Although petitioner's conviction was final before enactment of a one-year statute of limitations for federal habeas relief, there are exceptions to the procedural restriction and petitioner believes, and hopes to demonstrate to this Court, his case meets the requirements of one or more of those exceptions.

3.) TRUE. Petitioner, through counsel, has filed a previous federal habeas petition, which was denied, as was a certificate of probable cause. However, said petition did not raise or brief the issues presented in this, petitioner's second petition for writ of habeas corpus.

4.) TRUE.

LEGAL STANDARD(?)

Petitioner MAX was not aware, although argument may be made that he should have been, aware of the legal requirements for a Certificate of Appealability before the filing of his petition and does not, at this

time, Argue with the legal standards for doing so.

ARGUMENT

Whether or not this Court lacks jurisdiction is a matter for the Court to decide. However, as previously stated, this petition does not address the same issues as those presented in his previous habeas petition.

This is petitioner's "second" petition, the merits of which are based on newly discovered facts that challenge the accuracy of the guilty verdict, viz: Evidence of prosecutorial misconduct, perjury, subornation of perjury and a biased trial judge.

Through evidence, petitioner ~~petitioner~~ intends to establish these improper and illegal acts he now complains of AND, if allowed, to develop the record further, will prove that his due process rights to a fair trial were violated.

In conjunction with this Response, petitioner has included herewith his "MOTION IN ABEYANCE" requesting the Court to hold his case in pendent until such time as the federal Court of Appeals, Seven Circuit, has ruled on his application for

Certificate of Appealability or, in the Alternative, to Allow petitioner to withdraw his habeas petition without prejudice until his application is ruled upon by the Seventh Circuit Court of Appeals.

WHEREFORE, Joseph MAX, pro se petitioner herein, respectfully requests this Honorable Court Allow his CASE to move forward on the jurisdictional path towards adjudication of his claims of constitutional violations.

Respectfully Submitted,
Mr. Joseph Max

Joseph MAX

Reg. No. N 21823

P.O. Box 1900

Canton, Illinois 61520

Subscribed And Sworn to before
me this 28th day of May, 2008

Don A. Burkhardt
NOTARY PUBLIC
"OFFICIAL SEAL"
Don A. Burkhardt
Notary Public, State of Illinois
My Commission Exp. 08/22/2008

STATE OF ILLINOIS
COUNTY OF FULTON

SS

AFFIDAVIT

I, Joseph MAX, being first duly sworn upon oath deposes and states that the following affidavit is true and correct to the best of my knowledge and beliefs for all just and meritorious purposes. In support thereof I state as follows:

- 1.) That I am the petitioner in the cause of U.S. ex rel MAX v. Gilson, NO. 08C0616 and the affiant herein;
- 2.) That I am the author of the "Motion for Abeyance" and the "Response to Respondents Motion To Dismiss" both filed with this Court on or before the 30th day of May, 2008, the contents of which I believe to be true in substance and in fact;
- 3.) That I shall file, on or before, the 30th day of June, 2008, a "Certificate of

Appealability" before the Seventh Circuit Court of Appeals, requesting permission to file my habeas petition before this Honorable Court;

4.) That I have discovered new evidence of prosecutorial misconduct and prejudice of a biased trial judge which has denied affiant his constitutional right to a fair trial;

5.) That such new evidence will be supported by affidavit of the people who have provided this newly discovered evidence and shall, if allowed or subpoenaed, testify before this Court in relationship thereto.

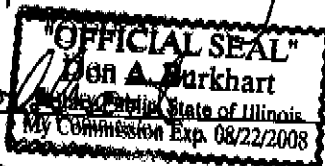
6.) That these Affidavits are supportive of affiant's claim of constitutional violations, and affiant's claims of such violations are supported by legal authority;

7.) That affiant shall present this newly discovered evidence, and support thereof, to the Seventh Circuit Court of Appeals with his application for Certificate of Appealability;

Further affiant sayeth naught.

Subscribed and Sworn to before
me this 28th day of May, 2008.

Don A. Burkhardt



NOTARY PUBLIC

MR. Joseph Max

Joseph Max, Affiant

Reg. No. N-21823

P.O. Box 1900

Canton, IL - 61520

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Joseph Max
Plaintiff,

v.

Kevin Gilson, Warden
Defendant

)
)
) Case No. 08 C 0616
)
)
)

PROOF/CERTIFICATE OF SERVICE

TO: Michael W. Dobbins-Clark
Clerk of the U.S. District Court
219 South Dearborn Street
Chicago, Illinois. 60604

TO: Chief, Criminal Appeals Division
Attorney General's Office
100 West Randolph Street-12th Floor
Chicago, Illinois. 60601

PLEASE TAKE NOTICE that on May 28, 2008, 20__, I have placed the documents listed below in the institutional mail at Ill. River Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service: Motion for Abeyance of Habeas Petition,
And/or Motion to withdraw without Prejudice,
(3-Motions To U.S. District Court, 1-Motion To Attorney General's Office)

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/109, I declare, under penalty of perjury, that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge.

DATE: May 28, 2008

/s/ Mr. Joseph Max
NAME: Mr. Joseph Max
IDOC#: N-21823
Ill. River Correctional Center
P.O. BOX 1900
Canton, IL 61520